

## REMARKS

### I. Specification

The Examiner has objected to the specification under 37 CFR §1.75(d)(1) as failing to provide proper antecedent basis for the claimed subject matter. Specifically, the Examiner argues that the terminology used in Claim 19 is not supported in the originally filed disclosure. Applicant has canceled Claim 19, which thereby obviates Examiner's objection.

### II. Declaration Under 37 CFR §1.131 to Remove Aarons Reference as Potential Prior Art under 35 U.S.C. §102(e) and §103(a)

The Examiner has determined that the Declaration of Judy-Lynne Alley filed on 06/06/05 is ineffective to overcome the U.S. Patent No. 6,766,536 (Aarons) reference.

37 CFR §1.131 Declarations may be used where the reference, a U.S. Patent, with a patent date less than 1 year prior to applicant's effective filing date, shows but does not claim the same patentable invention. See MPEP 715. However, when the reference in question is a noncommonly owned U.S. patent or patent application publication claiming the same invention as applicant and its publication date is less than 1 year prior to the presentation of claims to that invention in the application to be examined, applicant's remedy must be by way of 37 C.F.R. §41.202 instead of 37 C.F.R. §1.131. See MPEP 715.05. If the reference

is claiming the same invention as the application and its publication date is less than 1 year prior to presentation of claims to that invention in the application, this fact should be noted in the Office Action. *Id.* The reference can then only be overcome by an interference.

Applicant believes that the Aarons reference claims the same patentable invention. Therefore, on June 6, 2005, Applicant presented claims from the Aarons reference into her application and submitted a Declaration (including exhibits) under 37 C.F.R. §41.202 in order to suggest an interference. Examiner's final Office Action makes no note of the Aarons reference claiming the same invention as the Applicant's application nor that the publication date of the Aarons reference is less than 1 year prior to Applicant's presentation of claims to that invention in the application. Furthermore, Examiner's final Office Action refers to Applicant's Declaration, which was submitted under 37 C.F.R. §41.202, as a §1.131 Declaration. Based on the foregoing, it is clear that the Examiner believes that the Aarons reference shows but does not claim the same patentable invention. Applicant respectfully disagrees with the Examiner's conclusion. Nevertheless, Applicant now resubmits a Declaration, this time under 37 C.F.R. §1.131, in order to swear behind the Aarons reference.

With respect to 37 C.F.R. §1.131 Declarations, if the dates of the exhibits have been removed or blocked off, the matter of dates can be taken care of in the body of the declaration. See MPEP 715.07. When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the declaration may be the actual dates, or, if the applicant does not desire to disclose her actual dates, *she may merely allege that the acts referred to occurred prior to a specified date.* *Id.* (emphasis added). However, the actual dates of acts relied on to establish diligence must be provided. *Id.*

Submitted herewith is a new Declaration in accordance with the guidelines set forth in MPEP 715.07. Applicant respectfully submits that her date of conception is known; however, Applicant does not desire to disclose her actual date of conception at this time. Therefore, Applicant alleges that her date of conception occurred prior to February 27, 2003, i.e. the effective date of the Aarons reference. Such an allegation is allowed under MPEP 715.07.

In order to establish diligence from her date of conception, Applicant has resubmitted the exhibits that originally accompanied the 37 C.F.R. §41.202 Declaration filed on 06/06/2005. Applicant notes that the dates of these exhibits, which were initially blacked out for interference purposes, are no longer blacked out. Applicant further notes that the date on each of these documents

precedes the effective date of the Aarons reference, i.e. February 27, 2003.

Applicant respectfully submits that the Declaration and exhibits attached thereto are sufficient to establish that Applicant conceived of the invention and actually reduced it to practice prior to the effective date of the Aarons reference. Applicant further respectfully submits that the Aarons patent should therefore be removed as potential prior art under 35 U.S.C. §102(e) and §103(a).

It is not believed that this Amendment Letter and/or Declaration require any fees, but if there are any fees incurred by this communication, please deduct them from our Deposit Account NO. 23-0830.

Respectfully submitted,



Veronica-Adele R. Cao  
Reg. No. 52,694  
(480) 994-8888

Weiss, Moy & Harris, P.C.  
4204 N. Brown Ave.  
Scottsdale, AZ 85251-3914

4. I further declare that all statements made herein are of my own knowledge and all statements made on information or belief are believed to be true; and further that these statements are made with the knowledge that willful and false statements and the like so made are punishable by fine or imprisonment or both under § 1001 of Title 18 of the United States Code and that such willful and false statements may jeopardize the validity of the above-referenced application and any patent issuing therefrom.

FURTHER DECLARANT SAYETH NOT.



Judy-Lynne Alley

Date

11/3/8